

Office of the Secretary, Interior

§ 4.421

parties shall serve the Office of the Solicitor as indicated by the Notice of Appearance or Substitution of Counsel.

(d) Proof of such service as required by § 4.401(c) must be filed with the Board (address: Board of Land Appeals, Office of Hearings and Appeals, 801 North Quincy Street, Arlington, VA 22203), within 15 days after service unless filed with the notice of appeal.

[53 FR 13267, Apr. 22, 1988, as amended at 60 FR 58242, Nov. 27, 1995; 61 FR 40348, Aug. 2, 1996; 67 FR 4368, Jan. 30, 2002]

§ 4.414 Answers.

If any party served with a notice of appeal wishes to participate in the proceedings on appeal, he must file an answer within 30 days after service on him of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal. If additional reasons, written arguments, or briefs are filed by the appellant, the adverse party shall have 30 days after service thereof on him within which to answer them. The answer must state the reasons why the answerer thinks the appeal should not be sustained. Answers must be filed with the Board (address: Board of Land Appeals, Office of Hearings and Appeals, 801 North Quincy Street, Arlington, VA 22203) and must be served on the appellant, in the manner prescribed in § 4.401(c), not later than 15 days thereafter. Proof of such service as required by § 4.401(c), must be filed with the Board (see address above) within 15 days after service. Failure to answer will not result in a default. If an answer is not filed and served within the time required, it may be disregarded in deciding the appeal, unless the delay in filing is waived as provided in § 4.401(a).

[36 FR 7186, Apr. 15 1971, as amended at 67 FR 4368, Jan. 30, 2002]

ACTIONS BY BOARD OF LAND APPEALS

§ 4.415 Request for hearings on appeals involving questions of fact.

Either an appellant or an adverse party may, if he desires a hearing to present evidence on an issue of fact, request that the case be assigned to an administrative law judge for such a hearing. Such a request must be made in writing and filed with the Board

within 30 days after answer is due and a copy of the request should be served on the opposing party in the case. The allowance of a request for hearing is within the discretion of the Board, and the Board may, on its own motion, refer any case to an administrative law judge for a hearing on an issue of fact. If a hearing is ordered, the Board will specify the issues upon which the hearing is to be held and the hearing will be held in accordance with §§ 4.430 to 4.439, and the general rules in subpart B of this part.

§ 4.416 Appeals of wildfire management decisions.

The Board must decide appeals from decisions under § 4190.1 and § 5003.1(b) of this title within 60 days after all pleadings have been filed, and within 180 days after the appeal was filed.

[68 FR 33803, June 5, 2003]

HEARINGS PROCEDURES

Hearings procedures; general

§ 4.420 Applicability of general rules.

To the extent they are not inconsistent with these special rules, the general rules of the Office of Hearings and Appeals in subpart B of this part are also applicable to hearings, procedures.

§ 4.421 Definitions.

As used in this subpart:

(a) *Secretary* means the Secretary of the Interior or his authorized representatives.

(b) *Director* means the Director of the Bureau of Land Management, the Associate Director or an Assistant Director.

(c) *Bureau* or *BLM* means the Bureau of Land Management.

(d) *Board* means the Board of Land Appeals in the Office of Hearings and Appeals, Office of the Secretary. The terms "office" or "officer" as used in this subpart include "Board" where the context requires.

(e) *Administrative law judge* means an administrative law judge in the Office of Hearings and Appeals, Office of the Secretary, appointed under section 3105 of title 5 of the United States Code.

§ 4.422

(f) *State Director* means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(g) *District manager* means the supervising Bureau of Land Management officer of the grazing district in which the particular range lies, or his authorized agent.

(h) *Person named in the decision* means any of the following persons identified in a final BLM grazing decision: an affected applicant, permittee, lessee, or agent or lienholder of record, or an interested public as defined in § 4100.0-5 of this title.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 15117, Aug. 13, 1971; 68 FR 68770, Dec. 10, 2003]

§ 4.422 Documents.

(a) *Grace period for filing.* Whenever a document is required under this subpart to be filed within a certain time and it is not received in the proper office during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal or contest in connection with which the document is required to be filed. This paragraph does not apply to requests for postponement of hearings under §§ 4.452-1 and 4.452-2.

(b) *Transferees and encumbrancers.* Transferees and encumbrancers of land, the title to which is claimed or is in the process of acquisition under any public land law shall, upon filing notice of the transfer or encumbrance in the proper land office, become entitled to receive and be given the same notice of any contest, appeal, or other proceeding thereafter initiated affecting such interest which is required to be given to a party to the proceeding. Every such notice of a transfer or encumbrance will be noted upon the records of the land office. Thereafter such transferee or encumbrancer must be made a party to any proceedings

43 CFR Subtitle A (10-1-08 Edition)

thereafter initiated adverse to the entry.

(c) *Service of documents.* (1) Wherever the regulations in this subpart require that a copy of a document be served upon a person, service may be made by delivering the copy personally to him or by sending the document by registered or certified mail, return receipt requested, to his address of record in the Bureau.

(2) At the conclusion of any document that a party must serve under the regulations in this part, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service.

(3) A document will be considered to have been served at the time of personal service, of delivery of a registered or certified letter, or of the return by the post office of an undelivered registered or certified letter.

(d) *Extensions of time.* The Manager or the administrative law judge, as the case may be, may extend the time for filing or serving any document in a contest.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 15117, Aug. 13, 1971; 68 FR 33803, June 5, 2003]

§ 4.423 Subpoena power and witness provisions.

The administrative law judge is authorized to issue subpoenas directing the attendance of witnesses at hearings to be held before him or at the taking of depositions to be held before himself or other officers, for the purpose of taking testimony but not for discovery. The issuance of subpoenas, service, attendance fees, and similar matters shall be governed by the Act of January 31, 1903 (43 U.S.C. 102-106), and 28 U.S.C. 1821.

HEARINGS ON APPEALS INVOLVING QUESTIONS OF FACT

§ 4.430 Prehearing conferences.

(a) The administrative law judge may, in his discretion, on his own motion or motion of one of the parties or of the Bureau direct the parties or their representatives to appear at a